Revenue (1928) Department.

Miscellaneous SERIES.

G.O. No. 101

DATED 11-1-1928

[Despatch Abstract.]

Suit — South Kanara Coondapur District Munsiff's Court — C.S No 256/27 — Fishing rights — defence orders passed.

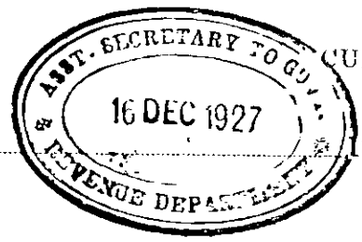
C.F. 91

urgent. Mam
Instrs urgent
Q
16/12

Revenue - **DEPARTMENT.**

CURRENT No. 3924 E

CW
16/12 E1



Received ..... 192 . *Registered* 16 12 927.

Subject.

Suit - (South Kanara) - Coondapur District Munsiff

Court - O.S.No.256/27 - Fishing rights -

ENCLOSURES
No. .....
.....
Spare copies .....

Reference-F--No.9375/27.1,

Station Madras, *Dated the* 14th December 1927.

From

The Board of Revenue, ~~Revenue~~ Land Revenue and Settlement, ~~etc.~~
~~Separate Revenue~~

H.G.Stokes Esquire. C.I.E., I.C.S.,
Commissioner of Land Revenue and Settlement.

~~Resolution~~
Reference.

Read the following paper:-

Letter from E.M.Gawne Esquire, I.C.S., Collector of South Kanara, Ref.on.A-3-No.3050/26, dated the 8th December 1927

The defence of this suit which was filed by Chandra and four other fishermen of the Kharvi community was sanctioned by Government in their Order No.1204 Misc., Revenue dated the 27th July 1926 communicated with B.P.No. Misc., 1694, dated the 30th July 1926. The suit is still under enquiry, and does not make much progress.

2. The suit is for a declaration that the fishermen of the Kharvi community including the plaintiffs are entitled to fix stakes for fishing in the Hungarcutta river - beginning at 420 feet from the west bank of the backwater

and

and not at 630 feet which was subsequently insisted on by the Port Officer. That is the fisherman sue for a declaration that the deep water channel for boats shall remain 420 feet wide and not be increased to 630 feet wide.

3. In September last, Mr.Mahabala Rao, the Vakil conducting the defence of the suit on behalf of Government informed me that the Plaintiffs were going to take the District Munsif for a local inspection so that he might see that if the 630 feet channel is enforced there would be no water left at all at low tide to fish in. On going through the records I found that the case had hardly been gone into on its merits. The Fishermen including the Plaintiffs had previously been allowed by the Port authorities to plant stakes for fishing purposes leaving clear a fairway channel of not less than 420 feet for navigation. In the beginning of 1925 there was a quarrel between the Plaintiff Chandra and the second Defendant Mutha in the matter of the space allowed to them for fixing stakes. Mr.T.Ramunni who was then the Port Conservator at Mangarkatta while reporting on this incident pointed out to the Port Officer that the passage of 420 feet was not sufficient for free navigation and that the stakes fixed were a source of hindrance to free navigation. The Port Officer accordingly raised the width of the prohibited area by 50%. This gave rise to the suit. This Order however had nothing to do with the quarrel between the fishermen. Their quarrel was as to the distance between each set of nets from North to South, not from East to West (see my sketch which shows 3 sets of nets placed for fishing when tide is coming in). It is obvious that if the nets are too close together, one net will 'blanket' the other and spoil its fishing.

4. As there was nothing to show clearly why the prohibited area was increased by 50% I asked the Tahsildar of Udipi Taluk to hold a local enquiry and inspection and submit a detailed report. I enclose the Tahsildar's report. As it appeared that the fishermen had been exercising the right of

fishing beyond 420 feet for a long time and as it was doubtful whether there were really strong reasons for increasing the - width of the channel to 630 feet, I asked the Port Officer whether he did not agree with me in thinking that Government - - should offer to compromise the suit by withdrawing to the original 420 feet line each party bearing its own costs, especially in view of the fact that Mr.T.Ramunni who should have been the best Government witness in the case was dead and the Plaintiffs had agreed to the terms of compromise which I suggested.

5. The Port Officer did not approve of the compromise. He said that the width of the channel was increased to 630 feet to conform with the Petroleum rules so that vessels carrying dangerous petroleum should not lie in close proximity to other vessels or foul the fairway and that the compromise might lead to the fishermen fixing stakes wherever they pleased and flouting the Port authorities. There was nothing in the Petroleum rules to show that the increased width of the channel was required. I pointed this out to the Port Officer and told him that a claim of mamul right which the fishermen had been exercising in the river for centuries should not be rejected lightly. The Port Officer then referred the matter to the Presidency Port Officer and the latter has informed me that it is immaterial to the Department whether the suit is compromised or defended.

6. As I did not get any definite encouragement from the Port Department in the matter of the compromise suggested by me, I thought it better to inspect the locality before proceeding further, and accordingly inspected it on 4th December 1927 with the Tahsildar and the Vakil for the Plaintiffs. I cannot see that Government are justified in continuing to insist on 630 feet. In the first place it is only necessary to look at the decaying houses on the once attractive bunder to see that as a Port Hungarcutta is dead. I am told that it lost its - trade after the war owing to the dishonesty of the rice merchants which gave the port a bad name. Only small sailing -

vessels

vessels have business in the river now. But the channel to the bunder is not required for sailing in as a boat wishing to come up to the port from the bar will only do it with the help of the tide, which rises and falls at a good pace. There is therefore no question of manoeuvring boats as if they had to tack up the river against the stream. Clearly to tack sea-going boats against a wind would require a lot more space than 420 feet or 630 feet.

7. I do not find force in the Port Officer sheltering behind the Petroleum rules. No dangerous petroleum is brought to Mangarkatta and even if it could be admitted that boat owners would let their boats foul each other if carrying rice, there would not be much greater danger if they collided when carrying ordinary petroleum. Any idea of this channel as a busy fairway with boats passing up and down is quite erroneous. Last year 303 vessels totalling 8059 tons put in at the port. This shows the nature of the boats using it.

8. Lastly when I saw the large expanse of open water that there is at high tide I realised that the fishermen would not be conducting a suit against Government if theirs was not a real grievance. They say that there is no use putting up their nets in the shallow waters as the fish come up in the deeper water and they do not attempt to do so. In the circumstances, and especially as Government have no strong evidence on their side, I think that Government ought to compromise the suit on the condition that Government withdraws its demand for 630 feet of channel and the Plaintiffs withdraw their suit and each side pays its own costs. I request that sanction may be accorded for compromise on these terms.

9. I have requested the Vakil to get the suit adjourned to some date early in January. I request that early orders may be passed and communicated to me.

Copy of letter from M.R.Ry., M.Ganesha Rao Avargal, Tahsildar of Udipi Taluk, Dis.No.275/D.Rev/27, dated the 27th September

September 1927.

I have inspected the locality and held a local enquiry in the matter.

2. A sketch of the locality is enclosed. The Hangarkatta river includes portions of the villages of Kodi, Airodi and Balakudru and the village boundary passes through the middle of the river. The river flows from south to north as shown in the eye-sketch. Major portion of the river is shallow. - Deep blue colour in the eye-sketch shows deep water and slight blue colour shows shallow water and the un-coloured portion is the space that dries up here and there in the hot season at the lowest tide of new moon and full moon days. . The river at its western bank is deep for a distance of about 300 feet west to east and the depth becomes lesser and lesser when it is - about 600 feet where the river is shallow. Point 'A' in the eye-sketch is 636 links or 420 feet from the shore and the - point 'B' is 954 links or 630 feet. The prohibited area of 630 feet is that lying between the river bank (S.No.75/1 of kodi) and the point 'B'. Formerly, it was 420 feet lying between S.No.75/1 and the point 'A'. The depth of water was 17 feet at the point 'A' and 10 feet 5 inches at 'B' at 4-15 **P.M.** on 23rd September 1927 when I inspected the locality. T h e Bar lies at the north and is about 10 marus or 50 feet wide and 8 to 12 feet deep.

3. The plaintiff's suit is for a declaration that they and other fishermen of the Kharvi community in Hangarkatta are entitled to fix stakes for fishing in the Hangarkatta river as of mamool right leaving a space of 420 feet towards the west (sea) for the purpose of navigation (i-e) the space lying between S.No.75/1 of Kodi (Kola garden) and the point marked 'A' in the eye-sketch.

4. My local enquiry shows that Hangarkatta was a thriving port and about 15 years ago even the steamers of the B.S. N.Company were calling at the port for about 3 or 4 years. -

After

After the war, the trade at this port has been declining. The fishermen were all along allowed to fix their stakes leaving a distance of 420 feet for navigation and I am told that there were no complaints from tindals of vessels or from local merchants about any inconvenience for navigation even at that time.

5. The prohibited area of 420 feet was lately increased to 630 feet in Collector's proceedings L.Dis.No.2485/25 dated the 21st April 1925 for navigation purposes. In his order No.33/101 P dated the 17th February 1922 (copy enclosed) the Port Officer has ordered that only one line of stakes should be allowed to be planted by fishermen in the black waters leaving clear a fair way channel of not less than 420 feet for navigation and that the various parties (fishermen) when planting stakes should occupy the positions as per their agreement of 1880. A copy of the judgment dated 4th August 1904 in O.S.No.6/1904 on the file of the District Munsiff, Kundapur, which was available with the plaintiff Chandra shows that the prohibited space is 420 feet distant from the stone embankment at Adda Bengre Kola ferry (i-e S.No.75/1 of Kodi) and the District Munsiff has remarked that the right of fishery in question seems to be a customary easement as defined in Section 18 of the Indian Easements Act V of 1882 (I.L.R.Madras 471 &c.,) The Port Department appears to have prosecuted one fisherman for fixing his stake within the prohibited area of 420 feet in the year 1902, when Mr.H.Sheshagiri Rao was the Port Conservator. Mr.H.Sheshagiri Rao when examined states that the fishermen were fixing stakes as a mamool right leaving a space of 420 feet from the shore free for navigation and that the prohibited space was quite sufficient for navigation purposes. The Plaintiffs have got a certified copy of the statement of Mr.H.Sheshagiri Rao in C.C.No.124/1902 on the file of the Stationery Sub Magistrate, Udipi. The second defendant in this suit also states that the prohibited area was 420 feet and that the river becomes too shallow with very little water hereand there at a distance of 630 feet from the river bank.

6. It is thus clear that the fishermen were exercising a right of fishing in the river all the time leaving a space of 420 feet

for navigation till 1925 when the space was increased to 630 feet and it is a question whether they have exercised the right as mamool without any interruption for over 60 years as against Government. The agreement of 1880 is, I understand, only a petition from the members of the Kharvi community binding themselves to put up their stakes in some order and that it does not make any mention of the prohibited area. The suit relating to the judgment referred to above was between private parties and the Government was not a party to it and the statement of H.Sheshagiri Rao does not also clearly show how long the fishermen have been fixing their stakes. Apart from these considerations and from an equitable point of view, we have to see whether the fishermen have any space sufficient for fishing purposes beyond the prohibited area of 630 feet from the river bank. The stakes are said to be planted about 5 or 6 yards apart for placing the stake nets and the fishermen have also to observe the order of places allotted to them in a line from west to east according to the agreement of 1880 and it appears that there are about 15 to 20 such places which cover a space of 300 or 400 feet. The right of fishing though not yet established as mamool cannot, in any case, be denied. The course of the river or rather its water current does not appear to have changed considerably and the enquiry shows that the space beyond the prohibited area of 630 feet dries up here and there in hot season. The river is wide enough to admit of storage of any articles such as Government timber and there is already a Government plot in Airodi for the storage of such timber - brought from Shitanadi. There is also sufficient space on both sides of the river for the storage of any article such as firewood &c., that are transported from the port. The trade is rather declining and very few vessels pass through the channel. In these circumstances I do not think it absolutely necessary to set apart 630 feet for navigation purposes under the present altered conditions, as a space of 420 feet was quite sufficient for the purpose even at a time when the Port was in a thriving condition.

REFERENCE.

REFERENCE.

Submitted to Government for favour of early Orders.

2. The Board supports the Collector's recommendation for a compromise of the suit on the terms suggested in paragraph 8 of his letter.

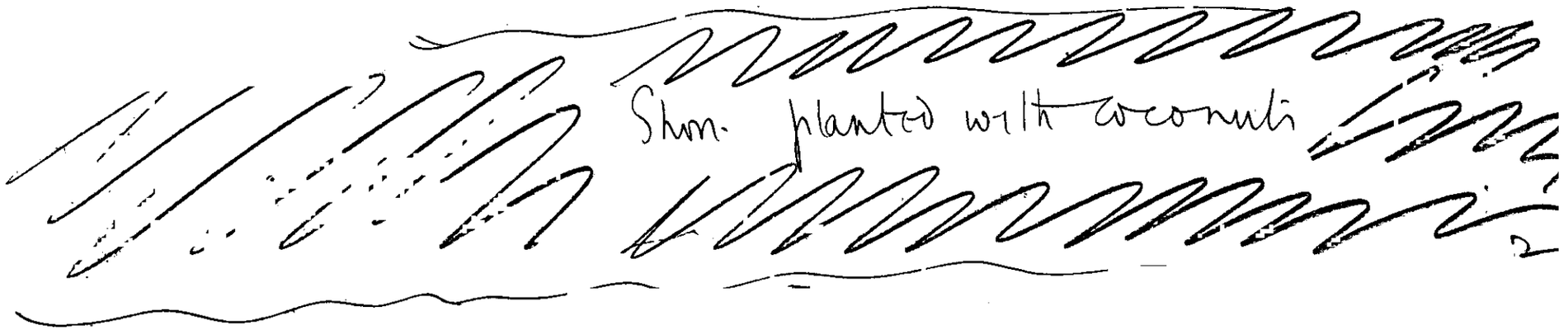
Assistant Secretary.

To the Secretary to Government, Revenue Department, with a sketch.

C.N.N./14-12-1927.

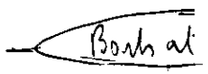
15.12.27

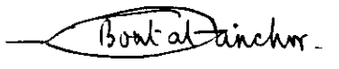
Arabs



Hanscar Katta Hut of Arabs

Deep channel





420 ft line

630 ft line

Very shallow water ~~ground~~ at low tide

Channel

8.12.17

9

C.No.3924-E/27.

I/ Revenue Department.

Suit - South Kanara - Coondapur District Munsiff Court - O.S.No.256/27 - Fishing rights.

Papers put up: (H)
G.O. No. 1204, Revd 27.7.26.

From the Board of Revenue, L.R and S, Refce-F-No. 9375/27-1 dated 14th December 1927.

To Under Secretary.

Please see the Board's Reference in the C.F.

(H) 2. In G.O.No.1204, Revenue dated 27-7-1926, the Government sanctioned the defence of the suit O.S.No. 256/26 on the file of the District Munsiff's Court, Coondapur, South Kanara District.

p1 C.F

3. The suit is for a declaration that the fishermen of the Kharvi community including the Plaintiffs are entitled to fix stakes for fishing in the Hungarcutta river beginning at 420 feet from the west bank of the backwater and not at 630 feet which was subsequently insisted upon by the Port Officer. That is, the fishermen sue for a declaration that the width of the deep water channel for boats shall not be increased from 420 feet to 630 feet.

Vide Sketch at p 9 C.F

para, pp 2-3 C.F

4. As there was nothing to show clearly why the prohibited area was increased by 50 per cent the Collector of South Kanara asked the Port Officer whether he would agree with him in thinking that the Government should offer to compromise the suit by withdrawing to the original 420 feet line, each party bearing its own costs, especially in view of the fact that Mr.Ramunni, the late Port Conservator, who should have been the best Government witness in the case was dead and the Plaintiffs had agreed to the terms of the compromise.

p 3 C.F.

5. The Port Officer did not approve of the compromise on the ground that the width of the channel was increased to 630 feet to conform with the Petroleum Rules

so that vessels carrying dangerous petroleum should not lie in close proximity to other vessels or foul the fairway and that the compromise might lead to the fishermen fixing stakes wherever they pleased. There is nothing in the Petroleum Rules to show that the increased width of the channel was required. The matter was referred &&&&&&&& by the Port Officer to the Presidency Port Officer who has informed the Collector that it is immaterial to his department whether the suit is compromised or defended.

para 5, p 3 CF

6. As the Collector did not get any encouragement from the Port Department concerning the compromise suggested by him he personally inspected the locality on the 4th December 1927 with the Tahsildar and the vakil for the Palintiffs. As a result of this inspection he is of the opinion that the Government are not justified in continuing to insist on 630 feet. He has stated that as no dangerous petroleum is brought to Hungarcutta there is no force in the Port Officer taking shelter under the Petroleum Rules and that the idea that this channel is a busy fairway with boats passing up and down, is quite erroneous.

para 6 Pp 3 & CF

Under these circumstances and as the Government have no strong evidence on their side he has suggested that Government ought to compromise the suit on the condition that Government withdraws its demand for 630 feet of channel and the plaintiffs withdraw their suit and each side paying its own costs and has requested that sanction may be accorded for compromise on these terms.

para 8, p 4 CF

The suit is posted to some date early in January next.

para 9, p 4 CF.

7. The Board of Revenue has supported the Collector's recommendations.

page 8 CF

Please see the notes on pages 14 and 15 of GO 1204/27.7.26

B and the orders in GO 1601 dy 13.7.16.
A and GO 1941 dy 25.8.16.
Rules have been made under
Sec 6 of the Indian Fisheries Act
of 1897 prohibiting the use of
fixed engines in the river in
question. These rules were not
mentioned in the written statement
H.f.g. approved in GO 1204 dy 27.7.26
For order whether, in view of the
prohibition under the rules, the
proposal to compromise the suit will
be approved

MJJ
21.12.27

S

I do not see the Hungarcattu rules mentioned
in any of the rules in the file. Please
speak as soon as the office reopens.

Dec 27

No. Inspite of the Board's
general prohibition each of the fishery
has not been shown to be
carried on in the years for
which it has not yet been pleaded it
had better be pleaded at once. 7.1.28

14

L.C.4.S

10.1.28

10.1.28.

A draft order is submitted

11.1.28

S

11.1.28

Closed Rule approved.

30.1.28

Sectt. IV-5 (b)—8,004—26-10-27. (6)

15 Revenue DEPARTMENT

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

READ AGAIN G.O. Mis No. 1204 Rev., dated 27-7- 1926 H'

" " " " " " 192

READ ALSO:—

C. No. 3924 -E From the Board of Rev. L.R. & Ref. F. No. 9375-27-1 dated 14-12- 192 7

" " " " " " 192

" " " " " " 192

ORDER.

No. 101, dated 11-1 192 8.

Mis.

With reference to the proposal to compromise O.S. No. 256/27 on the file of the District Munsiff's Court, Coondapur, the attention of the Board of Revenue is invited to G.O.No. 1601 dated 13-7-16 and G.O. No. 1941 Rev. dated 25-8-16 in which rules have been published under Section 6 of the Indian Fisheries Act of 1897 prohibiting the use of fixed engines for the purpose of fishing in the Sitanadi and Suvarnanadi rivers which apparently

16

join near the coast and form the Huncarcutta river.

2. The Board of Revenue is requested to consider whether the notifications in the G.O.'s mentioned in the preceding paragraph have not a bearing on the subject matter of the suit and whether the suit can succeed in the face of the prohibition notified in 1916.

3. If the statutory prohibition referred to ~~mentioned~~ above has not yet been mentioned in the pleadings made on behalf of the Government, the Board of Revenue is requested to issue instructions to have it pleaded ~~in~~ at once in the defence of the suit.

Bd of Rev. L. R & S.

DESPATCHED

C.F. 31

REVENUE DEPARTMENT.

CURRENT No.

Received 29 JAN 1928 192 Registered 192

ASST. SECRETARY TO GOVT. & REVENUE DEPARTMENT

Subject.

SUITS - (Kanara South) - Coondapur District Munsif's Court - O.S. 256/27 - Fishing rights in the Hangarcutta river - Defence - Papers recorded.

To U.S. Please see G.O. 101 Revenue 11-1-28. This may be looked and stitched with the G.O.

4-2-28

ENCLOSURES.
No.
Spare copies

Misc. No 293

Station Madras. *Dated the* 27th January 1928.

From

The Board of Revenue, Land Revenue & Settlement,

I.G. Stokes Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue & Settlement.

Resolution

Read the following--

G.O. Mis. 1204 Revenue dated 27-7-1926
G.O. Mis. 101 11-1-1928

Letter from E.M. Gawne Esq., I.C.S., Collector of South Kanara, No. Ref on A3-3050-26, dated 20-1-1928.

RESOLUTION.

R e c o r d e d.

(True Extract)

Assistant Secretary.

To the Collector of South Kanara.

Copy to the Secretary to Government, Revenue Department.

V.C/27.1.28.

P.T.O

48

Copy of letter from E.M. Gawne Esq., I.C.S., Collector of South Kanara, No. Ref on A3-3050-26, dated 20th January 1928.-

Suits - Coondapoor District Munsif's Court - O.S.No.256/26 - Fishing rights - Defence.

Board's Reference F.No. 9375/27-2, dated 16th January 1928.

It is a fact that the Hungarkatta river is formed at the coast where the two Rivers Sitanadi and Suvarnanadi join. The notifications in G.O. Nos. 1601, dated 13-7-1916 and 1941 Revenue, dated 25-8-1916 prohibiting the use of fixed engines for the purpose of fishing in these two rivers among others must therefore have a bearing on the subject matter of this suit and the suit cannot succeed in the face of this prohibition.

2. The G.O. (No. 1941 Revenue dated 25-8-1916) relating to the notification in question was referred to in this office letter Ref. on A3-3050-26, dated 29-6-1926 addressed to the Board for sanctioning the defence of the suit; but the statutory prohibition referred to therein was not mentioned in the pleadings made on behalf of Government. I have instructed the Vakil conducting the defence of the suit to plead it now and continue the suit..

AV